

## EXHIBIT 467

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - -

IN RE: NATIONAL	:	
PRESCRIPTION	:	MDL No. 2804
OPIATE LITIGATION	:	
	:	Case No.
	:	1:17-MD-2804
THIS DOCUMENT RELATES	:	
TO ALL CASES	:	Hon. Dan A. Polster

- - -

Monday, January 7, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of TOM NAMETH, held at  
the offices of Cavitch, Familo & Durkin,  
1300 East Ninth Street, Cleveland, Ohio, commencing at  
9:03 a.m., on the above date, before Carol A. Kirk,  
Registered Merit Reporter and Notary Public.

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1                   This says, right, "DDM  
2   distributors must be vigilant in deciding  
3   whether a prospective customer" -- which is the  
4   store or a pharmacist -- "can be trusted."

5                   And I'm asking you what you did,  
6   other than just blindly trusting them, to  
7   determine whether they could be trusted.

8                   A.     Well, we didn't blindly trust  
9   them. I mean, if I know a pharmacist for -- we  
10   had a long-standing history of having  
11   pharmacists under our control for numbers of  
12   years. We did not have a high turnover. We  
13   knew our people in the stores.

14                  So a trust is determined over a  
15   segment of time with that person. So obviously  
16   if you're looking at -- things were in place as  
17   far as licensures was correct. That was one  
18   aspect of it. But the other aspect of it is  
19   to -- we're not sending it to someone we don't  
20   know.

21                  Q.     Okay. So the two prongs of your  
22   discharging your duty to be vigilant is: One,  
23   the pharmacist has a license of his own or her  
24   own; and two, you know them personally, right?

1 A. Correct.

2 Q. Okay. Okay. If you go to the  
3 next page, page 2, second paragraph, second  
4 sentence, it says, "Moreover, all registrants -  
5 manufacturers, distributors, pharmacies, and  
6 practitioners - share responsibility for  
7 maintaining appropriate safeguards against  
8 diversion."

9 Do you see that?

10 A. Mm-hmm.

11 Q. And so you'd agree that that means  
12 that DDM and its pharmacies have a corresponding  
13 responsibility to protect against diversion,  
14 right?

15 A. Yes.

16 Q. Okay. And it says, "Nonetheless,  
17 given the extent of prescription drug abuse in  
18 the United States, along with the dangerous and  
19 potentially lethal consequences of such abuse,  
20 even just one distributor that uses its DEA  
21 registration to facilitate diversion can cause  
22 enormous harm."

23 Do you see that?

24 A. Mm-hmm.

1 Q. Would you agree with that?

2 A. Yes.

3 Q. Okay. If you go to the next  
4 paragraph. This is referencing a federal  
5 statute. Are you familiar with that statute,  
6 21 U.S.C. 823(e)?

7 A. I'd have to review it.

8 Q. Okay. It says -- and it talks  
9 about it here a little bit. It says listed  
10 among the factors on that statute is "the duty  
11 of a distributor to maintain effective controls  
12 against diversion of controlled substances into  
13 other than legitimate medical, scientific, and  
14 industrial channels."

15 Do you see that?

16 A. Mm-hmm, yes.

17 Q. And that's what we've been talking  
18 about today, right?

19 A. Yes.

20 Q. Okay. And down below it says,  
21 "The DEA regulations require all  
22 distributors" -- and that's DDM, right?

23 A. Yes.

24 Q. -- "to report suspicious orders of

1 controlled substances."

2 Do you see that?

3 A. Yes.

4 Q. And the regulations state in

5 21 C.F.R. 1301.74(b) the following --

6 A. Where are you?

7 MR. JOHNSON: Where are you right  
8 now?

9 A. I think I lost you.

10 MR. JOHNSON: It's not up on the  
11 screen.

12 MR. MULLIGAN: Yeah. We're good  
13 now. Do you guys see that now?

14 BY MR. MULLIGAN:

15 Q. So I'm looking at the indented  
16 paragraph, okay?

17 A. Go ahead and start.

18 Q. It says, "The registrant shall  
19 design and operate a system to disclose to the  
20 registrant suspicious orders of controlled  
21 substances."

22 Do you see that?

23 A. Yes.

24 Q. And so -- and that's -- the system

1     that DDM designed is the one that we've talked  
2     about today, right?

3             A.     Yes.

4             Q.     It says, "The registrant" -- which  
5     is DDM -- "shall inform the Field Division  
6     Office of the Administration in his area of  
7     suspicious orders when discovered by the  
8     registrant."

9                     Do you see that?

10            A.     Yes.

11            Q.     And you'd agree that that means  
12     that as soon as a suspicious order is  
13     identified, it must be reported immediately,  
14     right?

15                     MR. JOHNSON:  Objection.

16            A.     Yes.

17            Q.     Okay.  It doesn't say within a  
18     week, right?

19            A.     Right.

20            Q.     And it doesn't say within a month,  
21     right?

22            A.     Right.

23            Q.     And it doesn't say after you've  
24     done your due diligence, right?

1 A. Correct.

2 Q. It just says when it's identified,  
3 right?

4 A. Yes.

5 Q. Okay. "Suspicious orders include  
6 orders of unusual size, orders deviating  
7 substantially from a normal pattern, and orders  
8 of unusual frequency."

9 Do you see that?

10 A. Yes.

11 Q. So here the C.F.R. is actually  
12 defining the word "suspicious order," isn't it?

13 A. It says what it includes. It's  
14 not inclusive, but --

15 Q. Right. It's not -- it's not an  
16 exhaustive list --

17 A. Right.

18 Q. -- but it tells you what is a  
19 suspicious order under the regulations, right?  
20 And that would include an order of unusual size,  
21 right?

22 A. It includes orders of unusual  
23 size.

24 Q. Okay. And would you agree that

1 any order that shows up on your 12-month report  
2 or your monthly -- 12-month average report would  
3 reflect orders of unusual size by definition?

4 A. By definition, yes.

5 Q. Okay. And a suspicious order also  
6 includes orders deviating substantially from a  
7 normal pattern, correct?

8 A. Yes.

9 Q. And by definition, your report  
10 would also include orders deviating  
11 substantially from a normal pattern, right?

12 A. Yes.

13 Q. Okay. And the last thing is  
14 "orders of unusual frequency."

15 Do you see that?

16 A. Yes.

17 Q. Okay. So this definition of  
18 suspicious order would seem to include anything  
19 that would show up on your 12-month average  
20 report, correct?

21 A. Depends on what they're stating is  
22 unusual size.

23 Q. Well, I mean --

24 A. I mean, if on our report we look

1 at it, and if we could answer the reason why,  
2 then, you know, we could justify the order.

3 Q. Okay. But this -- the sentence  
4 above it says that you "shall inform the DEA of  
5 suspicious orders when discovered," right? And  
6 it doesn't say after doing due diligence, does  
7 it?

8 MR. JOHNSON: Objection.

9 Q. So you're getting -- is that  
10 right?

11 A. It doesn't say when.

12 Q. It says you have to -- well, it  
13 says, "The registrant shall inform the Field  
14 Division Office of the Administration in his  
15 area of suspicious orders when discovered."

16 A. Right.

17 Q. Okay. So you're saying that you  
18 didn't discover a suspicious order when you  
19 looked at the report; it was only after you did  
20 due diligence?

21 A. Correct.

22 Q. Okay. But you don't see that  
23 leeway in this text here, do you?

24 A. I'm looking at it. And when it

1     says -- are you pointing specifically to orders  
2     of unusual size, that particular aspect of it?  
3     We never identified suspicious orders, so ...

4             Q.     Did you ever have an order of  
5     unusual size?

6             A.     Yes.

7             Q.     Okay. Did you ever report those  
8     orders?

9             A.     Not after we reviewed them, no.

10            Q.     The answer to that question is you  
11     never reported them, right?

12            A.     We never reported a suspicious  
13     order.

14            Q.     Okay. So DDM had unusual --  
15     orders of unusual size, right?

16            A.     In this definition, it doesn't say  
17     what unusual size is. Is unusual size 100  
18     bottles in their definition or not? I mean,  
19     that's very -- you know, you can determine  
20     however you want the number on that. So ...

21            Q.     But DDM defined unusual size to  
22     orders on its own with its report that you  
23     reviewed, didn't it?

24            A.     We looked at higher than normal

1 orders.

2 Q. Okay. That's -- is that  
3 substantially different than an unusually sized  
4 order?

5 A. That's an interpretation.

6 Q. I mean, if a pharmacy is ordering  
7 ten bottles a month over 12 months and then they  
8 order twenty, that's unusual isn't it?

9 A. Can be.

10 Q. That's the whole point of the  
11 rolling average, right?

12 A. Can be.

13 Q. Okay. So DDM defined what an  
14 order of unusual size was through its report,  
15 right? And that was a report that you guys  
16 designed to identify suspicious orders, right?

17 A. Could be.

18 Q. Okay. Well, did it or not?

19 A. Again, I -- you know, according to  
20 this, that was our -- our report listed anything  
21 over 99 percent. I don't know what this unusual  
22 size means. Does it determine -- why didn't  
23 they tell me in the -- in this, why didn't they  
24 say -- give me a percentage and something

1 concrete to work with.

2 Q. All right. Sir, I'm asking you  
3 very specific questions and I'm happy to talk  
4 about this paragraph for the rest of the day if  
5 you want. But if you can listen to my questions  
6 and answer them, we'll be able to get through my  
7 remaining stack of documents a lot faster.

8 Okay. So I --

9 MR. JOHNSON: Objection.

10 Q. Would you agree with me that the  
11 DEA is saying that a suspicious order is one  
12 that includes orders of unusual size. Would you  
13 agree with that?

14 A. That's what it says.

15 Q. Okay. And would you agree that  
16 your rolling 12-month report showed orders of  
17 unusual size by definition?

18 A. I can't agree to that.

19 Q. You don't agree? So they were  
20 normal? There was nothing abnormal about those  
21 orders?

22 A. No. They were -- they could have  
23 been larger than normal, but what's unusual --  
24 it's not unusual to me once I find out the

1 reasoning.

2 Q. Okay. So therein lies what we  
3 talked about earlier, which is DDM's suspicious  
4 order monitoring policies turned on your  
5 subjective belief about what was unusual and  
6 what wasn't; is that fair?

7 A. Possibly.

8 Q. DDM didn't define unusual --  
9 orders of unusual size?

10 A. Well, they did when they said  
11 99 percent.

12 Q. Exactly. So anything that showed  
13 up on that report was an order of unusual size,  
14 right?

15 A. In DDM's mind but not necessarily  
16 in the DEA's mind.

17 Q. Okay. But in DDM's mind, DDM had  
18 orders of unusual size, correct?

19 A. Yes.

20 Q. Okay. And this says a suspicious  
21 order is one that is an order of unusual size,  
22 correct?

23 A. In -- in --

24 Q. Right?